

CHAPTER 1150
ESTATES AND TRUSTS
H.F. 2518

AN ACT relating to probate and trust law, including certain notification provisions, certain distributions to minors, the effect of dissolution of marriage on will provisions, powers of attorney, and making certain amendments to the Iowa trust code.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 633.32, subsections 1 and 2, Code 1999, are amended to read as follows:

1. On ~~May June~~ 1 and ~~November December~~ 1 of each year, the clerk shall notify the fiduciary and the fiduciary's attorney of any delinquent inventories or reports due by law in any pending estate, trust, guardianship, or conservatorship, and that unless such delinquent inventory or report is filed within sixty days thereafter, the matter shall be reported to the presiding judge. If the delinquent inventory is not filed within the time so specified, the fiduciary will be subject to removal under the provisions of section 633.65 of this Code.

2. On ~~July August~~ 1 and ~~January February~~ 1 of each year, the clerk shall report to the presiding judge all delinquent inventories or reports in estates, trusts, guardianships or conservatorships on which such notice has been given and no report or inventory has been filed in response to the notice.

Sec. 2. Section 633.108, Code 1999, is amended to read as follows:

633.108 SMALL DISTRIBUTIONS TO MINORS — PAYMENT.

Whenever a minor becomes entitled under the terms of a will to a bequest or legacy, to a share of the estate of an intestate, or to a beneficial interest in a trust fund upon the distribution of the trust fund, and the value of the bequest, legacy, share, or interest does not exceed the sum of ten thousand dollars, ~~and a conservator for the minor has not been appointed, the court having jurisdiction of the distribution of the funds may, in its discretion, upon the application of the fiduciary, enter an order authorizing the fiduciary to pay the bequest, legacy, share, or interest~~ the personal representative or trustee may pay the bequest, legacy, share, or interest to a custodian under any uniform transfers to minors Act. Receipt by the custodian, when presented to the court or filed with the report of distribution of the fiduciary, shall have the same force and effect as though the payment had been made to a duly appointed and qualified conservator for the minor.

Sec. 3. Section 633.271, Code 1999, is amended to read as follows:

633.271 EFFECT OF DIVORCE OR DISSOLUTION.

If after making a will the testator is divorced or the marriage is dissolved, all provisions in the will in favor of the testator's spouse, including but not limited to dispositions, appointments relating to property and nominations to serve in any fiduciary or representative capacity, are thereby revoked. In the event the testator and spouse remarry each other, the provisions of the will revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise revoked by the testator.

Sec. 4. Section 633.304, unnumbered paragraph 2, Code 1999, is amended to read as follows:

As used in this section, "heir" means only such person as would, in an intestate estate, be entitled to a share under section 633.219, subsection 1, 2, ~~or 3, or 4 of section 633.219~~.

Sec. 5. Section 633.305, unnumbered paragraph 2, Code 1999, is amended to read as follows:

As used in this section, "heir" means only such person as would, in an intestate estate, be entitled to a share under section 633.219, subsection 1, 2, ~~or 3, or 4 of section 633.219~~.

Sec. 6. Section 633.705, Code 1999, is amended to read as follows:

633.705 WHEN POWER OF ATTORNEY NOT AFFECTED BY DISABILITY.

1. Whenever a principal designates another the principal's attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal", or "This power of attorney shall become effective upon the disability of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal and the principal's heirs, devisees and personal representatives as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal, and the conservator shall have the power to revoke the power of attorney on behalf of the principal.

2. An affidavit, executed by the attorney in fact or agent stating that the attorney in fact or agent did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death or by the act of the principal, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when properly acknowledged is also recordable.

Sec. 7. Section 633.1102, subsection 15, as enacted by 1999 Iowa Acts, chapter 125, section 2, is amended to read as follows:

15. "Term" or "terms", when used in relation to a trust, means the manifestation of the settlor's intent regarding a trust's provisions at the time of the trust's creation or amendment. "Term" includes those concepts expressed directly in writing, as well as those inferred from constructional preferences or rules, or by other proof admissible under the rules of evidence.

Sec. 8. Section 633.2106, subsections 1 and 2, as enacted by 1999 Iowa Acts, chapter 125, section 13, are amended to read as follows:

1. Where the owner of property gratuitously transfers the property and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or the transferor's estate, unless ~~at~~ either of the following is true:

a. The transferor manifested in the trust instrument an intention that no resulting trust should arise.

b. The intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

2. Where the owner of property gratuitously transfers the property subject to a trust which is properly declared and which has been fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or the transferor's estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

Sec. 9. Section 633.2201, as enacted by 1999 Iowa Acts, chapter 125, section 15, is amended to read as follows:

633.2201 TERMINATION ~~OR MODIFICATION~~ OF TRUST.

1. In addition to the methods specified in sections 633.2202 through 633.2205, a trust terminates when any of the following occurs:

- a. The term of the trust expires.
- b. The trust purpose is fulfilled.
- c. The trust purpose becomes unlawful or impossible to fulfill.
- d. The trust is revoked.

2. On termination of a trust, the trustee may exercise the powers necessary to wind up the affairs of the trust and distribute the trust property to those entitled to the trust property.

3. For purposes of sections 633.2202 through 633.2205, a beneficiary is limited to a person that is an eligible recipient of income or principal, or would receive principal or income from the trust if it were terminated.

Sec. 10. Section 633.2203, as enacted by 1999 Iowa Acts, chapter 125, section 17, is amended to read as follows:

633.2203 MODIFICATION OR TERMINATION OF IRREVOCABLE TRUST ~~IF NO MATERIAL PURPOSE.~~

1. An irrevocable trust may be terminated or modified ~~either~~ by the court ~~or upon~~ with the consent of all of the beneficiaries if continuance of the trust on the same or different terms is not necessary to carry out a material purpose.

~~2. Upon petition to the court by the settlor, trustee, or other interested person, the court may set aside an improper termination or modification by the beneficiaries.~~

~~2.~~ 2. Upon termination of the trust, the trustee court shall ~~distribute~~ order the distribution of trust property in accordance with the probable intention of the settlor ~~or as agreed by the beneficiaries.~~

~~4.~~ 3. For purposes of this section, the consent of a person who may bind a beneficiary is considered the consent of the beneficiary.

Sec. 11. 1999 Iowa Acts, chapter 125, is amended by adding the following new section:

SEC. 110. NEW SECTION. 633.2203A MODIFICATION OF ADMINISTRATIVE PROVISIONS BY COURT FOR CHANGE OF CIRCUMSTANCES.

On petition by a trustee or beneficiary, the court may modify the administrative provisions of the trust, if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. If necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

Sec. 12. Section 633.2206, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 20, is amended to read as follows:

1. A trustee, without approval of court, may combine two or more trusts with substantially similar beneficial interests unless the trust is a court reporting trust.

Sec. 13. Section 633.2207, as enacted by 1999 Iowa Acts, chapter 125, section 21, is amended to read as follows:

633.2207 DIVISION OF TRUSTS.

1. Without approval of a court, a trustee may divide a trust into two or more separate trusts with substantially similar terms if the division will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries unless the trust is a court reporting trust.

2. On petition by a trustee or beneficiary, the court may divide a trust into two or more separate trusts, whether or not their terms are similar, if the court determines that dividing the trust is in the best interest of the beneficiaries and will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries. To facilitate the division, the trustee may divide the trust assets in kind, by pro rata or non-pro rata division, or by any combination of the methods.

Sec. 14. Section 633.3101, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 25, is amended to read as follows:

1. ~~The competency necessary to~~ To create, revoke, or modify a revocable trust, ~~that contains dispositive provisions upon the death of the settlor is the same as the competency required to make a will~~ must be competent. An aggrieved person shall have all causes of action and remedies available to the aggrieved person in attacking the creation, revocation, or modification of a revocable trust as one would if attacking the propriety of the execution of a will.

Sec. 15. Section 633.3104, subsection 2, as enacted by 1999 Iowa Acts, chapter 125, section 28, is amended to read as follows:

2. Following the death of a settlor, the property of a revocable trust subject to the settlor's power of revocation at the time of death is subject to the claims of the settlor's creditors and costs of administration of the settlor's estate to the extent of the value of the property over which the ~~settlor's~~ settlor had a power of revocation ~~and, if the settlor's estate is inadequate to satisfy those claims and costs.~~

Sec. 16. Section 633.3107, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 31, is amended to read as follows:

1. If, after executing a revocable trust, the settlor is divorced or the settlor's marriage is dissolved, all provisions in the trust in favor of the settlor's spouse including, but not limited to, dispositions, appointments of property, and nominations to serve in any fiduciary or representative capacity are revoked by divorce or dissolution of marriage.

Sec. 17. Section 633.3108, as enacted by 1999 Iowa Acts, chapter 125, section 32, is amended to read as follows:

633.3108 LIMITATION ON CONTEST OF REVOCABLE TRUST.

Unless notice is given as provided in section 633.3109, the following provisions shall apply:

1. Unless previously barred by adjudication, consent, or other limitation, a proceeding to contest the validity of a revocable trust must be brought no later than one year following the death of the settlor.

2. Unless the trustee is a party to a pending proceeding contesting its validity, six months following the death of the settlor, the trustee of a revocable trust may assume the trust's validity and proceed to distribute the trust property in accordance with the terms of the trust, without liability for so doing. Liability for an improper distribution in such a case is solely on the beneficiaries.

~~3. If notice is given pursuant to section 633.3109, the six month period in subsection 2 is ineffectual and the applicable time period shall be determined by section 633.3109.~~

Sec. 18. Section 633.3109, as enacted by 1999 Iowa Acts, chapter 125, section 33, is amended to read as follows:

633.3109 NOTICE TO CREDITORS, HEIRS, SPOUSE, AND BENEFICIARIES.

1. As used in this section, "intestate heir" means only such person as would, in an intestate estate, be entitled to a share under section 633.219, subsection 1, 2, ~~or 3,~~ or 4.

2. A creditor of a deceased settlor of a revocable trust must bring suit to enforce its claim against the assets of the decedent's trust within one year of the decedent's death or be forever barred from collection against the trust assets. If a probate administration is commenced for the decedent and notice is properly given pursuant to section 633.230 or 633.304, a creditor's rights shall be determined under those sections and section 633.3104.

3. If no notice is given to creditors and heirs pursuant to subsection ~~1~~ 2, a creditor's rights may be established or terminated if the trustee gives notice as follows:

a. The trustee shall publish a notice once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the ~~settlor was~~

domiciled decedent was a resident at the time of death, and in any county of which the decedent was a nonresident but in which some real estate of the trust is located. If the decedent was not a resident of Iowa, but the principal place of administration is in Iowa, the trustee shall publish notice in the county that is the principal place of administration pursuant to section 633.6102.

b. If the decedent was a nonresident of the county in which some real estate of the trust is located, and at any time during the pendency of the trust administration the trustee has knowledge of the name and address of a person believed to own or possess a claim which will not, or may not, be paid or otherwise satisfied during administration, the trustee shall provide a notice by ordinary mail to each such claimant at the claimant's last known address.

c. As soon as practicable, the trustee shall give a notice by ordinary mail to the surviving spouse, the intestate heirs of the decedent, and each beneficiary under the trust whose identities are reasonably ascertainable, at such person's last known addresses.

d. The notice in paragraphs "a", "b", and "c" shall include notification of the decedent's death, and the fact that any action to contest the validity of the trust must be brought within the later to occur of sixty days from the date of the second publication of the notice made pursuant to paragraph "a" or thirty days from the date of mailing of the notice pursuant to paragraph "b" or "c". A person who does not make a claim within the appropriate period is forever barred.

e. The trustee shall give notice to debtors to make payment, and to creditors having claims against the trust assets to mail proof of their claim to the trustee via certified mail, return receipt requested, within the later to occur of sixty days from the second publication of the notice or thirty days from the date of mailing of the notice, or thereafter be forever barred.

4. The notice described in subsection 3 shall be substantially in the following form:

To all persons regarding _____, deceased, who died on or about _____, (year) _____. You are hereby notified that _____ is the trustee of the _____ Trust. At this time, no probate administration is contemplated with regard to the above-referenced decedent's estate.

Any action to contest the validity of the trust must be brought in the District Court of _____ County, Iowa, within the later to occur of sixty days from the date of second publication of this notice, or thirty days from the date of mailing this notice to all heirs of the decedent, spouse of the decedent, and beneficiaries under the trust whose identities are reasonably ascertainable. Any claim not filed within this period shall be forever barred.

Notice is further given that all persons indebted to the decedent or to the trust are requested to make immediate payment to the undersigned trustee. Creditors having claims against the trust must mail them to the trustee at the address listed below via certified mail, return receipt requested. Unless creditor claims are mailed by the later to occur of sixty days from the second publication of this notice or thirty days from the date of mailing this notice, a claim shall be forever barred, unless otherwise allowed or paid.

Dated this _____ day of _____, (year) ____.

Trust

Trustee

Address: _____

Date of second publication _____ day of _____, (year) ____.

5. The claimant either must receive satisfaction of its claim ~~within sixty days of mailing its claim to the trustee~~, or must file suit against the trust to enforce collection of the creditor's claim within sixty days of mailing its claim to the trustee. The trustee and creditor may agree to extend the limitations period for filing an action to enforce the claim. If the claimant fails to properly file its claim within the established time period or bring an action to enforce its claim within the established time period, the creditor's claim shall be forever barred.

Sec. 19. Section 633.3111, subsection 2, as enacted by 1999 Iowa Acts, chapter 125, section 35, is amended to read as follows:

2. A trustee shall be entitled to indemnification from the beneficiaries for all amounts paid to creditors under this section, to the extent of distributions made.

Sec. 20. Section 633.4101, as enacted by 1999 Iowa Acts, chapter 125, section 36, is amended to read as follows:

633.4101 ACCEPTANCE OR REJECTION OF TRUST BY DECLINATION TO SERVE AS TRUSTEE.

1. A person named as trustee accepts the office of trustee by doing one of the following:

a. Signing the trust instrument, or signing a separate written acceptance.

b. Except as provided in subsection 3, knowingly accepting delivery of the trust property or exercising powers or performing duties as trustee.

2. A person named as trustee who has not yet accepted the office of trustee may in writing ~~reject the trust~~ decline to serve as trustee.

3. If there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the office of trustee, if within a reasonable time after acting, the person delivers a written ~~rejection of the trust~~ declination to serve to the settlor, or if the settlor is dead or lacks capacity, to the beneficiaries eligible to receive income or principal distributions from the trust.

Sec. 21. Section 633.4104, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 39, is amended to read as follows:

1. The person named as trustee ~~rejects the trust~~ declines to serve as trustee.

Sec. 22. Section 633.4105, as enacted by 1999 Iowa Acts, chapter 125, section 40, is amended to read as follows:

633.4105 FILLING VACANCY.

~~1. For purposes of this section, "adult beneficiaries" shall not include either of the following:~~

~~a. Beneficiaries who are not competent and are not represented by a guardian, conservator, or agent.~~

~~b. Beneficiaries who are not entitled or eligible to receive trust income or a distribution of principal were the trust to terminate at the time the agreement is made.~~

~~2. 1. A trustee must be appointed to fill a vacancy in the office of the trustee only if the trust has no trustee or the terms of the trust require a vacancy in the office of cotrustee to be filled.~~

~~3. 2. A vacancy in the office of trustee shall be filled according to the following:~~

~~a. By the person named in or nominated pursuant to the method specified by the terms of the trust.~~

~~b. If the terms of the trust do not name a person or specify a method for filling the vacancy, or if the person named or nominated pursuant to the method specified fails to accept, one of the following methods shall be used:~~

~~(1) By a trust company designated by agreement of the adult beneficiaries specified in subsection 1.~~

~~(2) (1) By majority vote of all adult beneficiaries and the parent or legal guardian representative of any minor or incompetent beneficiary, as defined by section 633.6303.~~

~~(3) (2) By a person appointed by the court on petition of an interested person or of a person named as trustee by the terms of the trust. The court, in selecting a trustee, shall consider any nomination made by the adult beneficiaries and representatives.~~

~~3. Beneficiaries entitled to vote are those who are currently entitled or eligible to receive trust income or a distribution of principal if the trust were to terminate at the time of the vote.~~

Sec. 23. Section 633.4107, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 42, is amended to read as follows:

1. A trustee may be removed in accordance with the terms of the trust, ~~by the court on its own motion,~~ or on petition of a settlor, cotrustee, or beneficiary under section 633.6202.

Sec. 24. Section 633.4111, subsection 2, paragraph b, as enacted by 1999 Iowa Acts, chapter 125, section 46, is amended to read as follows:

b. Each beneficiary who was given the last preceding ~~account~~ accounting.

Sec. 25. Section 633.4504, as enacted by 1999 Iowa Acts, chapter 125, section 76, is amended to read as follows:

633.4504 LIMITATION OF ACTION AGAINST TRUSTEE ~~FOLLOWING FINAL ACCOUNT.~~

1. Unless previously barred by adjudication, consent, or other limitation, a claim against a trustee for breach of trust is barred as to a beneficiary who has received a final account or other report adequately disclosing the existence of the claim, unless a proceeding to assert the claim is commenced within one year after the ~~later~~ earlier of the receipt of the ~~account~~ accounting or report ~~or of~~ the termination of the trust relationship between the trustee and beneficiary. An account or report adequately discloses the existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence.

2. For the purpose of subsection 1, a beneficiary is deemed to have received an account or report in the following instances:

a. In the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally.

b. In the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the adult's legal representative, including a guardian ad litem or other person appointed for this purpose.

c. In the case of a minor, if it is received by the minor's guardian or conservator or, if the minor does not have a guardian or conservator, if it is received by a parent of the minor who does not have a conflict of interest.

3. Any claim for breach of trust against a trustee who has presented a final report to a beneficiary more than one year prior to the effective date of this Act shall be time barred unless some exception stated in this section applies which tolls the statute. Any claim arising under this section within one year of the effective date of the Act shall be time barred after one year unless an exception applies to toll the statute.

Sec. 26. 1999 Iowa Acts, chapter 125, section 69, is repealed.

Approved April 26, 2000

CHAPTER 1151

GIFTED AND TALENTED PROGRAM FUNDING

H.F. 2145

AN ACT providing for the utilization of budget enrollment in determining gifted and talented program funding, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 257.46, subsection 2, Code Supplement 1999, is amended to read as follows:

2. The remaining portion of the budget shall be funded by the thirty-eight dollar increase in allowable growth for the school budget year beginning July 1, 1999, ~~increased by the~~